

WILMERHALE

June 12, 2025

Brittany Amadi

BY ECF AND EMAIL

+1 617 526 6000 (t)
+1 617 526 5000 (f)
brittany.amadi@wilmerhale.com

The Honorable Katherine Polk Failla
United States District Judge
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007
Failla_NYSDChambers@nysd.uscourts.gov

MEMO ENDORSED

Re: *Netflix, Inc. v. Fortress Investment Group LLC et al.*, No. 1:25-mc-00230-KPF

Dear Judge Failla,

Pursuant to the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, Rule 5.2(b) and 7.1(d), and the United States District Court, Southern District of New York's Sealed Records Filing Instructions ("Filing Instructions"), Netflix, Inc. ("Netflix") respectfully submits this letter requesting to file redacted portions of its Letter Motion in Opposition to Fortress Investment Group LLC and DivX CF Investors LLC's Letter Motion for Protective Order.

"Although the right of public access to court records is firmly entrenched and well supported by policy and practical considerations, the right is not absolute." *In re Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994). Third parties' privacy interests are a venerable common law exception to the presumption of access. *United States v. Amodeo*, 71 F.3d 1044, 1051 (2d Cir. 1995). This Court has routinely held that "[r]edaction may be appropriate to protect confidential information." *See, e.g., Fairstein v. Netflix, Inc.*, No. 20-cv-8042 (PKC), 2023 WL 6164293, at *1 (S.D.N.Y. Sept. 21, 2023).

Netflix seeks to file under seal the Proposed Sealed Exhibits, which have been designated as "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" in the underlying litigation, *DivX, LLC v. Netflix, Inc.*, Civil Action No. 2:19-cv-1602-GW (DFMx) (C.D. Cal.) (the "California litigation"). In so designating, the parties that produced the designated documents affirmed that these documents contain information, the disclosure of which "would create a substantial risk of serious harm that could not be avoided by less restrictive means." *DivX, LLC v. Netflix, Inc.*, Civil Action No. 2:19-cv-1602-GW (DFMx) (C.D. Cal.), Dkt. 100 (Stipulated Protective Order) at 3. As such, Netflix moves to file under seal the Proposed Sealed Exhibits to maintain confidential business information of DivX, LLC, Fortress Investment Group LLC, DivX

WILMERHALE

June 12, 2025

Page 2

CF Investors LLC, and affiliated entities, in accordance with the Protective Order in the California action.

Netflix respectfully requests that this Court defer to the Stipulated Protective Order in the underlying litigation and seal the documents at issue here.

Sincerely,

A handwritten signature in blue ink, appearing to read "Brittany Amadi".

Brittany B. Amadi

Application GRANTED.

The Clerk of Court is directed to terminate the pending motion at docket entry 26 and to maintain docket entry 27 under seal, viewable to the Court and the parties only.

Dated: June 16, 2025
New York, New York

SO ORDERED.

A handwritten signature in blue ink, appearing to read "Katherine Polk Failla".

HON. KATHERINE POLK FAILLA
UNITED STATES DISTRICT JUDGE